

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JUDY MESIROV, Derivatively on Behalf  
of FIFTH STREET FINANCE CORP.,

Plaintiff,

v.

LEONARD M. TANNENBAUM, BERNARD  
D. BERMAN, ALEXANDER C. FRANK,  
TODD G. OWENS, IVELIN M. DIMITROV,  
RICHARD A. PETROCELLI, JAMES  
CASTRO-BLANCO, BRIAN S. DUNN,  
RICHARD P. DUTKIEWICZ, DOUGLAS F.  
RAY, BYRON J. HANEY, and FIFTH  
STREET ASSET MANAGEMENT, INC.,

Defendants,

-and-

FIFTH STREET FINANCE CORP., A  
Delaware corporation,

Nominal Defendant.

Case No. 1:16-cv-552-UA

**NOTICE OF VOLUNTARY  
DISMISSAL WITHOUT  
PREJUDICE**

**TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE THAT pursuant to Rule 41(a)(1) of the *Federal Rules of Civil Procedure*, plaintiff Judy Mesirov (“Plaintiff”) through her attorneys of record, hereby gives notice of voluntary dismissal without prejudice of this action, subject to Rule 23.1(c) of the *Federal Rules of Civil Procedure* (“Rule 23.1(c)”). This action was commenced on January 25, 2016, no defendants have been served with the complaint and therefore defendants have neither answered the Complaint nor filed a motion for summary judgment. Plaintiff submits that no notice to shareholders is required under Rule 23.1(c) because neither Plaintiff nor Plaintiff’s counsel has received or will receive any compensation for this dismissal, and at least two other

shareholder derivative actions are pending in the United States District Court District of Connecticut alleging identical or substantially similar claims on behalf of Fifth Street Finance Corp.: (1) *Chau v. Tannenbaum, et al.*, Civil Action No. 3:15-cv-01795-RNC (D. Conn.); and (2) *Avera v. Tannenbaum, et al.*, Civil Action No. 3:15-cv-01889-CSH (D. Conn.) (collectively, the “Connecticut Actions”). Moreover, on or about January 21, 2016, a joint motion was filed seeking consolidation of the Connecticut Actions and any later filed actions, as well as the appointment of lead and liaison counsel for plaintiffs, a stay of proceedings until September 30, 2016, and certain agreements regarding discovery. Voluntary dismissal of this action will ensure that motions and discovery proceedings are managed in one court through designated lawyers, thereby eliminating duplication of efforts by the parties and undue burdens on the court.

Dated: January 27, 2016

Respectfully submitted,

HYNES KELLER & HERNANDEZ, LLC

By: /s/ Beth A. Keller

Beth A. Keller

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*Attorneys for Plaintiff*

Dated: \_\_\_\_\_

IT IS SO ORDERED

\_\_\_\_\_  
U.S. District Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 27, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing.

I hereby certify as of this date there are no CM/ECF participants listed on the Court's docket as no defendants have been served with the complaint or made an appearance in this action. I served this Notice of Voluntary Dismissal Without Prejudice by U.S. Mail and email on counsel as set forth below. I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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Dated: January 27, 2016

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